CHAPTER 13

Innovative Finance

Innovative Finance

While the traditional financing mechanisms discussed in Chapter 6 provide most of the funding that supports surface transportation, innovative financing mechanisms are playing an increasingly important role. This report defines "Innovative Finance" broadly, reflecting a wide array of techniques designed to supplement traditional financing mechanisms.

Innovative finance techniques include a series of administrative and legislative initiatives undertaken in recent years designed to accelerate surface transportation project development and expand the base of available resources by (1) removing barriers to private investment; (2) bringing the time value of money into Federal program decision making; (3) encouraging the use of new revenue streams, particularly to retire debt obligations; and (4) reducing financing and related costs, thus freeing up savings for transportation system investment. These financing initiatives and techniques, which are commonly used in the private sector, are relatively new to Federally-aided transportation funding and are thus frequently referred to collectively as "innovative finance."

Innovative finance concepts have evolved over time. The Intermodal Surface Transportation Efficiency Act (ISTEA) and Transportation Equity Act for the 21st Century (TEA-21) laid the foundations for several new concepts designed to fund transportation investment. The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) has continued the development of innovative financing mechanisms, including credit assistance, innovative debt financing, and **Public-Private Partnerships**. The current status of these programs is described in more detail below.

Previous editions of the C&P report have included discussions of private investment and other innovative funding sources in Chapter 6. This discussion was moved to a stand-alone chapter in this edition to highlight the growing importance of these revenue sources. However, it is important to recognize that the revenue sources described in this chapter overlap those in Chapter 6. For example, for statistical reporting purposes, State governments are instructed to include contributions from private developers as part of their miscellaneous receipts for highways. Thus, the figures presented here are not additive to those in Chapter 6. While this report does not endorse any particular level of future highway or transit investment and does not assign cost responsibility by level of government, it is clear that **the quality of the future conditions and performance of the Nation's transportation system may depend to a significant degree on the success of efforts to leverage public funds with private investments**, such as those described in this chapter.

Credit Assistance

Federal credit assistance for transportation projects takes various forms and can provide an efficient means of utilizing scarce Federal budget authority. Secured (direct) loans and loan guarantees to project sponsors provide the necessary capital to advance a project. Credit enhancement, including standby lines of credit, make Federal funds available on a contingency basis, reducing the risk to investors and allowing project sponsors to borrow at lower interest rates. These projects typically involve partnerships between the public and private sectors. Two of the most significant Federal credit assistance programs, introduced in recent years, the Transportation Infrastructure and Finance Innovation Act (TIFIA) and the State Infrastructure Bank (SIB) programs, are discussed below, along with Section 129(a) loans.

Transportation Infrastructure and Finance Innovation Act (TIFIA)

The TIFIA program was created under TEA-21, and reauthorized under SAFETEA-LU. The program is administered by the U.S. Department of Transportation (DOT), and offers eligible applicants the opportunity to compete for secured (direct) loans, loan guarantees, and standby lines of credit for up to one-third of the cost of construction for nationally and regionally significant projects, provided that the borrower has an associated revenue stream, such as tolls or local sales taxes, that can be used to repay the debt issued for the project. To qualify, a project must meet certain dollar thresholds, reflecting congressional intent to assist major projects that are able to attract substantial private capital with limited Federal investment. These eligibility thresholds were reduced under SAFETEA-LU. Under the new criteria, projects must have eligible costs that total at least $50 million or exceeded 33 percent of a State's Federal-aid highway apportionments for the most recent fiscal year, whichever is smaller. Intelligent transportation system projects are subject to a lower minimum threshold of $15 million.

Through July 2006, the 12 projects receiving commitments of TIFIA credit assistance represented more than $13.2 billion of infrastructure investment in the United States. The 13 credit agreements (one project has multiple agreements) executed or under negotiation amounted to almost $3.2 billion in Federal credit assistance at a budget cost of less than $190 million in contract authority. Borrowers have drawn about 20 percent of the TIFIA proceeds made available through these agreements. No TIFIA borrower has defaulted on a loan repayment. Since June 2002, five borrowers have retired their TIFIA loans, either by early repayment or by refinancing the loan prior to draws. *Exhibit 13-1* displays key information about the TIFIA projects, which include highway toll roads and bridges, transit systems, rails stations, ferry terminals, and intermodal facilities.

Exhibit 13-1

Financial Performance of TIFIA-assisted Projects (as of July 15, 2006)

Credit Agreement	Location	Status	Project Cost	TIFIA Amount	Amount Disbursed	Percent Disbursed	Project Completion
Tren Urbano	Puerto Rico	Paid In Full	$2,250,000,000	$300,000,000	$300,000,000	100.00%	6/6/05
Miami Intermodal Center [1]	Florida	Paid In Full	1,349,700,000	269,076,000	15,000,000	5.57%	4/18/09
Cooper River Bridges	South Carolina	Refinanced	677,000,000	215,000,000	0	0.00%	7/9/05
Staten Island Ferries	New York	Paid In Full	482,200,000	159,225,300	159,161,429	99.96%	7/1/06
Reno ReTRAC	Nevada	Paid In Full	279,900,000	50,500,000	50,500,000	100.00%	11/18/05
Central Texas Turnpike [2]	Texas	Active	3,659,900,000	916,760,000	0	0.00%	12/1/07
WMATA Capital Program [3]	DC, VA, MD	Active	2,324,000,000	600,000,000	0	0.00%	6/30/09
Miami Intermodal Center [4]	Florida	Active	[5]	170,000,000	0	0.00%	6/30/07
SR 125 South Toll Road	California	Active	628,800,000	140,000,000	102,268,025	73.05%	12/1/07
183 A Toll Road [2]	Texas	Active	331,200,000	66,000,000	0	0.00%	3/1/07
LA-1 Project [2]	Louisiana	Active	247,300,000	66,000,000	0	0.00%	8/1/09
Warwick Intermodal Station	Rhode Island	Active	222,300,000	42,000,000	0	0.00%	10/1/09
Moynihan Station	New York	Term Sheet	795,000,000	160,000,000	0	0.00%	tbd
Total			**13,247,300,000**	**3,154,561,300**	**626,929,454**	**19.87%**	

[1] The first of two Miami Intermodal Center (MIC) loans helped finance elements constructed by Florida DOT.

[2] Disbursements will occur near the project's completion date in order to refinance short-term Bond Anticipation Notes (BANs).

[3] The TIFIA assistance is a loan guarantee. Disbursements would only occur if the borrower is unable to repay its third-party loan.

[4] The second of two MIC loans helps finance construction of a consolidated rental car facility.

[5] The project cost is incorporated into the cost of the first MIC loan.

Source: *Transportation Infrastructure Finance and Innovation Act Report to Congress*, July 2006.

State Infrastructure Banks (SIBs)

Section 350 of the National Highway System Designation Act of 1995 (NHS Act) authorized DOT to establish the State Infrastructure Bank Pilot Program. This program provides increased financial flexibility for infrastructure projects by offering direct loans and loan guarantees. SIBs are capitalized with Federal and State funds. Some States augment these operating reserves through a variety of methods, including special appropriations and debt issues. Each SIB operates as a revolving fund and can finance a wide variety of surface transportation projects. As loans are repaid, additional funds become available to new loan applicants.

Under the NHS Act, 31 States established SIBs. TEA-21 limited the use of newly authorized funds for SIB capitalization to four States, of which only two actually operated under the TEA-21 provisions; the remaining States participating in the SIB program operated under NHS Act provisions and were not allowed to capitalize SIBs with TEA-21 funds. SAFETEA-LU established a new SIB program under which all States and territories are authorized to enter into cooperative agreements with the Secretary of Transportation to establish infrastructure revolving funds eligible to be capitalized with Federal transportation funds authorized for fiscal years 2005 through 2009. Three SIB accounts may be established (highways, transit, and rail). Under SAFETEA-LU, States that established SIBs authorized by TEA-21 and the NHS Act may continue to operate those SIBs.

States participating in the new SIB program established by SAFETEA-LU may capitalize their SIB highway account with up to 10 percent of the funds apportioned to the State for the National Highway System Program, the Surface Transportation Program, the Highway Bridge Program, and the Equity Bonus; their SIB transit account may be capitalized with up to 10 percent of the funds made available for capital projects under Urbanized Area Formula Grants, Capital Investment Grants, and Formula Grants for Other Than Urbanized Areas for fiscal years 2005 through 2009.

Exhibit 13-2 reflects the number of SIBs loans and loan agreements by State. As of June 2005, $5.1 billion in loan agreements had been made by 33 States, of which $3.7 billion had been disbursed for 457 loan agreements. Twenty-one States had signed SIB cooperative agreements with the Federal Transit Administration (FTA), and eight had executed at least one public transit loan. Total SIB public transit loan activity was equal to $94.5 million.

SIB transit funds may be used to assist a variety of transit capital projects, such as facility construction, asset purchase and rehabilitation, or asset leasing. Each SIB (subject to the negotiated term of its cooperative agreement with the FTA) has the ability to offer diverse forms of credit assistance for these projects, such as direct loans, loan guarantees, subsidized interest rates, loan subordination, or bond insurance. The eight States that have executed public transportation SIB loans are assisting $318.7 million in projects. Many of the loans have assisted communities with local project match requirements, enabling local governments to accelerate the implementation of transportation infrastructure and services that might otherwise have been postponed.

Section 129 Loans

Prior to 1991, States were only allowed to use Federal-aid highway funds on a "grant" reimbursement basis. Section 129(a) of Title 23 allows States a means to recycle Federal-aid highway funds by lending them out to pay for projects with dedicated revenue streams, obtaining repayments from project revenues, and then reusing the repaid funds on other highway projects. For example, a State may directly lend apportioned funds (not exceeding more than 80 percent of the project cost) to projects generating a toll or that have some

Exhibit 13-2

State Infrastructure Bank Loans and Loan Agreements by State, as of June 2005

State	Number of Agreements	Loan Amount ($000)	Disbursements
Alaska	1	2,737	2,737
Arizona	49	564,000	474,000
Arkansas	1	31	31
California	2	1,120	1,120
Colorado	4	4,400	1,900
Delaware	1	6,000	6,000
Florida	50	867,000	281,000
Indiana	2	5,715	5,715
Iowa	2	2,879	2,879
Maine	23	1,635	1,635
Michigan	33	22,207	22,207
Minnesota	17	102,776	96,447
Missouri	15	92,557	82,770
Nebraska	2	6,792	6,792
New Mexico	4	25,216	17,815
New York	10	27,700	27,700
North Carolina	2	1,713	1,713
North Dakota	2	3,891	3,891
Ohio	70	221,739	177,379
Oregon	19	34,394	25,052
Pennsylvania	62	39,000	24,000
Puerto Rico	1	15,000	15,000
Rhode Island	1	1,311	1,311
South Carolina	8	2,605,000	2,092,000
South Dakota	3	28,776	28,776
Tennessee	1	1,875	1,875
Texas	54	277,237	260,358
Utah	1	2,888	2,888
Vermont	2	1,975	1,300
Virginia	1	18,000	17,985
Washington	3	2,376	487
Wisconsin	3	1,813	1,813
Wyoming	8	77,977	42,441
Total	**457**	**5,067,730**	**3,729,017**

other dedicated revenue such as excise, sales, property, and motor-vehicle taxes and other beneficiary fees, so long as the project sponsor pledges revenues from a dedicated source for repayment of the loan. These types of loans are attractive to private investors because they can be used to offset up-front capital requirements, such as right-of-way acquisition, physical construction, or engineering costs that might otherwise have to be borrowed at higher interest rates on the open market. Only those costs incurred after a loan is authorized by the Federal Highway Administration (FHWA) are eligible for reimbursement from loan proceeds; costs incurred prior to the authorization of the loan are not eligible for reimbursement.

Section 129 loans allow States the opportunity to get more mileage out of annual apportionments. Since Federal funds are cycled through a section 129 loan and such loans must comply with Federal requirements and laws that are attached to Federal-aid highway projects, the funds obtained by the State from loan repayment no longer retain characteristics of Federal funds. Therefore, repaid funds may be used without complying with Federal requirements and laws normally attached to Federal-aid projects, freeing them up to be used to fund any project eligible for funding under Title 23 and as a means of credit enhancement (in the form of bond insurance or capital reserve for project debt).

Q&A

What are some other innovative finance techniques being used as part of the Federal-aid Highway Program?

When trying to accelerate project construction, States often face challenges in aligning funding needs and availability. To address this, grant management tools commonly referred to as "cash flow tools" are being utilized to broaden a State's options for meeting matching requirements and to relax the timing restrictions placed on obligating funds.

Advance construction (AC) allows States to seek approval and begin Federal-aid highway projects using their own funds before any Federal funds have been obligated. An AC project may be "converted" to Federal assistance, either in stages or in its entirety, once there is sufficient Federal-aid funding and obligation authority for the project. Through December 2004, projects totaling over $1.2 billion had entered into AC agreements.

Other cash flow management tools available to States include flexible match, tapered match, or the use of toll credits to meet the local financing share requirements for Federal-aid highway projects.

Debt Financing

Because of their complexity, cost, and lengthy design and construction periods, transportation projects are often financed by issuing bonds. Repayment of the bonds over several years has traditionally been covered by sources such as State and local taxes or revenue generated from highway user fees. More recently, highway and transit project sponsors have begun issuing debt instruments called Grant Anticipation Notes (GANs), backed by anticipated grant moneys. Grant Anticipation Revenue Vehicles (GARVEEs) are a particular form of GAN being used for transportation projects.

Grant Anticipation Revenue Vehicle (GARVEE)

GARVEE bonds permit an expanded variety of debt issuance expenses to be reimbursed with anticipated Federal funds. In addition to traditional debt service (principal and interest), expenses such as underwriting fees, bond insurance, and financial counsel are also eligible for reimbursement. Prior to the NHS Act of 1995, eligible reimbursement expenses were limited to principal repayment and were restricted to certain categories of construction projects. Debt instruments issued by special purpose nonprofit corporations (classified as 63-20 corporations by the Internal Revenue Service) may be repaid with Federal-aid funds if the bonds are issued on behalf of the State and the proceeds are used for projects eligible under Title 23. As of May 2006, the amount of GARVEE debt issued nationally had reached about $5 billion [*Exhibit 13-3*]. As of December 2005, transit grant anticipation debt had exceeded $3.5 billion.

GARVEEs have become facilitators in the creation of public-private partnerships. They expand access to capital markets, supplementing general revenue bonds, and provide immediate and reliable sources of funding, making large projects possible and allowing construction to begin more quickly—all of which attract greater private sector involvement because of the GARVEE's ability to yield immediate influxes of up-front capital for major highway projects in the form of bond proceeds at tax-exempt rates.

Exhibit 13-3

GARVEE Transactions to Date, as of May 2006

State	Number of Issue	Issues (Millions)	Rating Moody's/S&P/Fitch	Projects Financed	Backstop
Alabama	Apr-02	$200.0	Aa3/A/na	County Bridge Program	All Federal construction reimbursements. Also insured.
Alaska	Apr-03	$102.8	Aa2/AA/AA	Eight Road and Bridge Projects	Full faith and credit of state.
Arkansas	Mar-00 Jul-01 Jul-02	$175.0 $185.0 $215.0	Aa2/AA/na Aa2/AA/na Aa2/AA/na	Interstate Highways	Full faith and credit of state, plus state motor fuel taxes.
Arizona	Jun-00 May-01 Jul-03 ** May-04 Oct-04	$39.4 $142.9 $122.7 $51.0 $104.4	Aa3/AA-/AA- Aa3/AA-/AA- Aa3/AA-/AA- Aa3/AA-/AA Aa3/AA-/AA	Maricopa freeway projects	Certain sub-account transfers.
California	Mar-04	$615.0	Aa3/AA-/AA-	Eight Road Projects	Insured except 2005 series
Colorado *	May-00 Apr-01 Jun-02 Aug-03 May-04	$537.0 $506.4 $208.3 $100.0 $135 .0	Aa3/AA/AA Aa3/AA/AA Aa3/AA/AA Aa3/AA/AA Aa3/AA/AA	Any project financed wholly or in part by Federal funds	Federal highway funds as allocated annually by CDOT; Other state funds.
Kentucky	May-05	$139.60	Aa3 / AA-/AA-	Three Interstate widening and rehabilitation projects	No backstop; bond insurance obtained.
Maine	Dec-04	$48.4	Aa3/NA/AA-	Replacement of the Waldo-Hancock Bridge	No backstop; bond insurance obtained.
Montana	Mar-05	$122.8	Aa3/A+	44 miles of US 93 improvements	No backstop; bond insurance obtained.
New Mexico	Sep-98 Feb-01	$100.2 $18.5	Aa A2/A/na	New Mexico SR 44	No backstop; bond insurance obtained.
North Dakota	Jun-05	$51.40	AA1/AA/na	Highway and bridge projects	Bond insurance obtained
Ohio	May-98 Aug-99 Sep-01 Sep-02 Jan-04	$70.0 $20.0 $100.0 $135.0 $113.8	Aa3/AA-/AA- Aa3/AA-/AA- Aa3/AA/AA- Aa3/AA/AA- Aa3/AA/AA-	Various projects including: Spring-Sandusky and Maumee river improvements	Moral Obligation pledge to use state gas tax funds and seek general fund appropriations in the event of Federal shortfall.
Oklahoma***	3/4/2004 8/1/2005	47.6 48.9	Aa3/na/A+ Aa3/na/A+	Projects in 12 corridors	None
Puerto Rico	Apr-04	$136.0	A2/A/na	Various Transportation Projects	Mix of tax and fee revenue
Rhode Island	11/3/2003 03/06/06	$217.0 $184.6	Aa3/A+/AA- Aa3/A+/AA-	Freeway, Bridge and Freight Rail Improvement Projects	None
Virgin Islands	Oct-02	$20.8	na/na/AAA	Enighed Pond Port Project and Red Hook Passenger Terminal Building	Insured
Total		**$4,963.1**			

* Colorado DOT issued $400.2 million in June 2002 and $280.2 in May 2004 to refund prior bonds.
** Excludes $26.3 million in proceeds used to refund outstanding June 2000 bonds
*** With premiums on net proceeds worth $50 million

Public-Private Partnerships

States are increasingly looking to the private sector as a potential source of highway and transit funding, either in addition to or in concert with new credit and financing tools. The private sector often has expertise that may not be readily available in the public sector that can bring innovation and efficiency to many projects. There is a long history of private

Q&A

What is a public-private partnership?

A public-private partnership (PPP) is a broad term that collectively refers to contractual agreements formed between public and private sector partners, where the private sector partner steps outside of its traditional role and becomes more active in making decisions as to how a project will be completed.

sector involvement in providing highway transportation dating back to the late 1700s and early 1800s when numerous private toll roads were built to open interior areas of the country for commerce and settlement. In more recent times, private residential and commercial real estate developers have contributed directly to the growth of the transportation network by constructing local property access roads and upgrading adjacent collector or arterial routes, or by paying impact fees to local governments for use in improving the regional transportation system.

While private sector involvement in highway financing and construction slowed somewhat with the advent of dedicated public funding for highways, there has been renewed interest in private sector involvement in highway construction programs in recent years as highway budgets have been stretched. A variety of institutional models are being used including (1) concessions for the long-term operation and maintenance of individual facilities or entire highway systems; (2) purely private sector highway design, construction, financing, and operation; and (3) public-private partnerships in designing, constructing, and operating major new highway systems. While a few States currently account for the majority of private sector financing, many more States have expressed interest in the potential for greater private sector involvement.

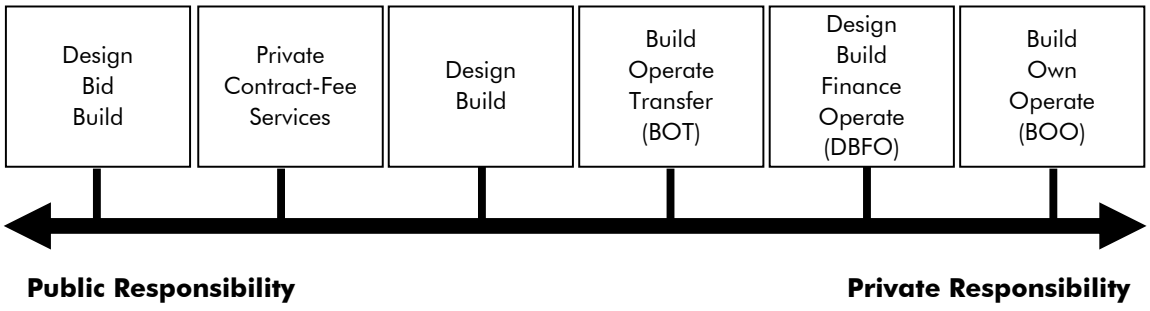
Public-Private Partnership Options

Exhibit 13-4 depicts some of the more common PPP options currently being utilized in the United States, showing how the range of responsibilities shifts from the public sector to the private sector with different PPP options. Options for PPPs stretch across a spectrum of increased private responsibilities and range from transferring tasks normally done in-house to the private sector, to combining typically separate services into a single procurement or having private sector partners assume owner-like roles.

Traditionally, private sector participation in surface transportation projects has been limited to separate planning, design, or construction contracts, but the PPP options shown here depict the ways in which private sector responsibilities can be expanded through the use of partnerships. The services and responsibilities for PPPs differ from one project to another because of the many different PPP options and the combinations in which they may be utilized.

Exhibit 13-4

Public-Private Partnership Options and Range of Responsibility



Public-Private Partnership Agreements

This section provides examples of four PPP Agreements, the legal document establishing the rights and obligations of transportation infrastructure owners and their private sector partners to develop PPP projects; agreements also describe the service to be provided, standards to be maintained, and the business and financial relationships between public agencies and their private sector partners.

Q&A

What are some examples of the more common public-private partnership options in the United States?

- Design-Bid-Build. Design-bid-build models segregate design and construction responsibilities by awarding them to an independent private engineer and a separate private contractor, separating the delivery process into three linear phases: (1) Design, (2) Bid, and (3) Construction.
- Private Contract-Fee Services. In order to tap technical, management, and financial planning expertise readily available to the private sector, an increasing number of public agencies are transferring responsibility for services they would typically perform in-house to private sector companies, through the awarding of competitively procured contracts to the bidder providing the best value, reflecting both price and technical qualifications.
- Design-Build. Design-build combines two usually separate services into a single contract as a method of project delivery. In a design-build procurement, owners execute a single, fixed-fee contract for both architectural/engineering services and construction to a design-build entity; a design-build entity may be a single firm, a consortium, joint venture, or other organization assembled for a particular project.
- Build-Operate-Transfer (BOT)/Design-Build-Operate-Maintain (DBOM). BOT/DBOM or "turnkey procurement," is an integrated partnership that combines the design and construction responsibilities of design-build procurements with operations and maintenance, so that design, construction, and operation of a facility or group of assets can be transferred to a private sector partner.
- Design-Build-Finance-Operate (DBFO). The DBFO approach bundles and transfers the responsibilities for designing, building, financing, and operating to private sector partners. There is a great deal of variety in DBFO arrangements in the United States, especially the degree to which financial responsibilities are actually transferred to the private sector.
- Build-Own-Operate (BOO). Under the BOO model, a private company is granted the right to develop, finance, design, build, own, operate, and maintain a transportation project, owning the project outright and retaining the operating revenue risk and all of the surplus operating revenue.

South Bay Expressway (California State Route 125)

After being on the drawing board for more than two decades, the South Bay Expressway successfully obtained financing in the amount of $773 million and will now be built, creating a major transportation corridor that will facilitate increasing traffic and trade across the U.S.-Mexico border crossing at Otay Mesa with Chula Vista and other suburbs east of San Diego.

With completion expected in the first quarter of 2007, the South Bay Expressway is one of the few private toll roads to be financed in the United States in recent years. The project is being advanced under a concession agreement between the California Department of Transportation and the San Diego Expressway Limited Partnership (SDELP), a wholly owned subsidiary of project sponsor Macquarie Infrastructure Group. Macquarie, who has invested more than $150 million in the South Bay Expressway project, acquired the project from the prior owners and developed an integrated financing and security package incorporating private equity, senior bank debt, and significant public investment. A portion of the public investment came in the form of donated right-of-way; the remainder came in the form of a $140 million TIFIA loan, without which the project most likely would not have advanced.

Under the South Bay Expressway concession, the SDELP will design, finance, construct, and then operate the toll road for a 35-year period. The concession, which was granted by CALTRANS in 1991, allows the

SDELP flexibility in setting tolls. In addition to the $635 million South Bay Expressway, Macquarie will manage the construction of two sections (the 1.9-mile connection to S.R. 125 North and the 1.2-mile connection to S.R. 54) of untolled government-funded road at a cost of $138 million.

This TIFIA project, advanced with substantial private equity and bank loans, demonstrates how innovative Federal financing tools can attract private investment to critical transportation projects.

Chicago Skyway

In January 2005, the City of Chicago announced that it had entered into an agreement with the Cintra-Macquarie consortium to lease the 7.8-mile Chicago Skyway Toll Bridge System for 99 years; under the lease agreement Cintra-Macquarie paid the City of Chicago $1.83 billion for the rights to operate and collect tolls on the Chicago Skyway. The privatization of the Skyway, an existing toll road, is the first agreement of its kind in the United States. The lease agreement establishes maximum toll rates and sets performance standards that must be maintained on the facility. The Cintra-Macquarie consortium will be responsible for all operating and maintenance costs of the Skyway and will have the right to all toll and concession revenue.

Trans Texas Corridor (TTC-35)

In March 2005, the Texas Department of Transportation and Cintra-Zachary, an international consortium of engineering, construction, and financing firms, signed an agreement to develop the Trans Texas Corridor (TTC-35). Under the agreement, Cintra-Zachary will invest $6 billion to build a toll road between Dallas and San Antonio by 2010 and pay the State $1.2 billion for the concession and negotiate a 50-year contract to maintain and operate the new highway as a toll road.

Indiana Toll Road

The Indiana Toll Road is a 157-mile roadway that runs from Ohio to Chicago across the northern part of Indiana. In March 2006, Indiana agreed to lease the Indiana Toll Road to the Cintra-Macquarie consortium. Under the agreement, Indiana will lease the toll road to Cintra-Macquarie for 75 years in exchange for a lump sum payment of $3.8 billion, which the State will invest in infrastructure improvements.

Special Experimental Project No. 15 (SEP-15)

SEP-15 is a new experimental process within FHWA to identify, for trial evaluation, new PPP approaches to project delivery. SEP-15 is designed to allow the FHWA to identify regulations that currently inhibit the creation of Public-Private Partnership and private investment in transportation improvements, yet at the same time allowing the FHWA to develop

Q&A

What is required to participate in a SEP-15 experiment?

All SEP-15 applications must be submitted by a State department of transportation to its FHWA Division Office. Although localities and private transportation ventures may be joint project sponsors, the State department of transportation should be the primary sponsor. All applications must contain a brief description of the project, any proposed experimental techniques, and the reasons why the experiment is sought. Experimental techniques may involve changes to the FHWA's traditional project approval procedures, modifications in the implementation of FHWA policy, or deviation from current Title 23 requirements for Federal-aid projects.

At various milestones during the experiment, both public and private sector sponsors must independently prepare and submit reports summarizing the experiment that was undertaken and the lessons learned from the SEP-15 process. Sponsors must also evaluate the process, including whether or not it was successful and the impact that it had on the project, and make recommendations for statutory or regulatory changes to the process that would expedite the successful delivery of Federal-aid projects.

Q&A

What additional tolling authority is available under SAFETEA-LU?

New provisions in SAFETEA-LU that provide States with expanded authority and increased flexibility to use tolling on highways are as follows:

- Under the **Interstate System Construction Toll Pilot Program,** a State may collect tolls on Interstate highways, bridges, or tunnels for the purpose of constructing new Interstate highways; the program is limited to three projects in total nationwide.
- The **Express Lane Demonstration Program** allows States, public authorities, or public or private entities to apply for participation in projects (15 total nationwide) that would permit the automated collection of tolls on existing toll facilities, existing High Occupancy Vehicle (HOV) facilities, and newly created toll lanes to demonstrate the impact that tolling can have on managing high levels of congestion, reducing emissions in non-attainment and maintenance areas, and financing the addition of Interstate lanes for the purpose of reducing congestion. Tolls charged on HOV facilities under this program must vary according to time of day or level of traffic; variable pricing on non-HOV facilities is optional.

SAFETEA-LU also continued the strides made with passage of ISTEA, the NHS Act of 1995, and TEA-21 in increasing the flexibility that States have to levy tolls on highways.

- The Congestion Pricing Pilot Program, established under Section 1012(b) of ISTEA, was reborn in the form of the Value Pricing Pilot Program under Section 1216(a) of TEA-21. The **Value Pricing Pilot Program** was mandated as an experimental program by Congress to examine the potential effects that different value pricing approaches would have on congestion reduction. SAFETEA-LU continues the Value Pricing Pilot Program basically unchanged from its authorization under TEA-21. For additional information on the Value Pricing Pilot Program, visit http://www.fhwa.dot.gov/tolling_pricing/.
- The **Interstate System Reconstruction and Rehabilitation Toll Pilot Program** was established under Section 1216(b) of TEA-21 as a construction revenue source and allowed tolling on up to three existing Interstate facilities (highway, bridge, or tunnel) to fund needed construction or rehabilitation on Interstate highway corridors where work had halted because the estimated improvement costs exceeded available funding and could not otherwise be adequately maintained or functionally improved. SAFETEA-LU makes no revision to this program.

procedures and approaches to address these impediments. It is anticipated that these new approaches will increase project management flexibility, encourage innovation, improve timely project construction, and generate new revenue streams for Federal-aid transportation projects, allowing for the efficient delivery of transportation projects without impairing the FHWA's ability to carry out its stewardship responsibilities to protect both the environment and American taxpayers.

SEP-15 addresses, but is not limited to, four major components of project delivery: innovative contracting, compliance with environmental requirements, right-of-way acquisition, and project finance.

Private Activity Bonds

SAFETEA-LU amended the Internal Revenue Code to include highway facilities and surface freight transfer facilities among the types of privately developed and operated projects that can utilize tax-exempt private activity bond financing. The new bonds would be subject to the Internal Revenue Code rules that govern exempt facility bonds, except that they would not count against a State's private activity bond volume cap. The maximum aggregate amount of bonds that could be issued under the provision would be $15 billion. The Secretary of Transportation would allocate the $15 billion of authority among eligible projects. Highway facilities eligible for financing under the program would consist of any surface transportation project eligible for Federal assistance under Title 23, or any project for an international bridge or tunnel

for which an international entity authorized under Federal or State law is responsible. Surface freight transfer facilities would consist of facilities for the transfer of freight from truck to rail or rail to truck, including any temporary storage facilities directly related to those transfers. Examples of eligible surface freight transfer facilities would include cranes, loading docks, and computer-controlled equipment that are integral to such freight transfers. Examples of nonqualifying facilities would include lodging, retail, industrial, or manufacturing facilities. A number of States have expressed interest in applying for an allocation of these funds. As of December 2006, about $1.9 billion had been allotted for a highway concession in Texas.

Other Initiatives

In the last few years, the USDOT has undertaken a number of initiatives to help remove barriers and increase the role of the private sector in highway construction, operation, and maintenance, such as conducting outreach workshops to facilitate knowledge exchange between State governments and the private sector; case studies on how States and local governments have overcome institutional barriers to PPP implementation; and the development and launch of the PPP Web site that contains links to many PPP resources, both domestic and international.

Q&A

What are some non-finance related provisions in SAFETEA-LU that will assist in attracting private sector investment?

SAFETEA-LU modified the current Design-Build provisions to allow transportation agencies to proceed with certain actions related to entering into a design-build contract prior to the completion of the National Environmental Policy Act process. The change is designed to encourage Public-Private Partnerships by allowing private sector partners to be involved much earlier in the project definition stage of project development. SAFETEA-LU also eliminates the $50 million floor on the size of eligible design-build contracts.

Other SAFETEA-LU provisions that will encourage private sector involvement in highway infrastructure projects include a new environmental review process and the establishment of pilot programs where States assume all USDOT environmental responsibilities under NEPA and other environmental laws. Additional information on the new environmental review process and the new pilot programs is available in Fact Sheets for Highway Provisions in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) at http://www.fhwa.dot.gov/safetealu/factsheets/factsheets-safetea-lu.pdf.

In December 2004, the USDOT issued a *Report to Congress on Public-Private Partnerships*, a source of information on the value that these types of partnerships can add to our nation's transportation system that included quantifiable cost and time savings; anecdotal evidence suggesting that quality and innovation increase by involving the private sector in the early stages of a project; and case studies. The FHWA also published the *Manual for Using Public-Private Partnerships on Highway Projects*, intended to provide a one-stop resource for States interested in pursuing PPPs.

The PPP Web site created by the FHWA contains examples of different types of PPPs, case studies, a resource library, and links to other PPP Web sites in order to provide a comprehensive, electronic source of information to States and the public. Both the *Report to Congress on Public-Private Partnerships* and the *Manual for Using Public-Private Partnerships on Highway Projects* can be found on the PPP Web site at http://www.fhwa.dot.gov/ppp.